IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3824 OF 2004.
AND
CHAMBER SUMMONS NO.1955 OF 2004
IN
LAND ACQUISITION REFERENCE NO.6 OF 1988
IN
CASE NO.IAQ/333

The Special Land Acquisition Officer(3)
Bombay.

And

Mr.Adi Khurshed Cursetji. ..Claimant.

Naval Coast Battery of Western
Naval Command ..Acq.Body.

And

Mr.Nowroz Jilla ..Applicant.

Mr.D.D.Madon with P.Sawant i/b Joy Legal Consultants for Applicants in N.M.no.3824/2004.

Mr.S.A.Rajguru for Acquiring Body.

Ms.Geeta Shashtri, AGP for SLAO.

Mr.Pankaj Sawant i/b Joy Legal for applicant in Chamber summons No.1955/2004.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 27, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. Indeed there is delay in taking out present application for restoration of the proceedings. The reference was dismissed on 14th June, 2002, whereas the present application has been filed in December, 2004. It appears that even after dismissal of the reference application, the original claimant was alive till 20th May, 2003, but no steps were taken to recall the order dated 14th June, 2002, passed by this court dismissing the reference No.6 of 1988.

3. However, it is seen from the explanation offered that the original applicant was unaware of the fact that the matter was already disposed of for default on 14th June, 2002. It appears that the matter was dismissed for default because of nonappearance of advocate on that date inspite of instructions given by the original claimant. In so far as period after 20th May, 2003, no steps have been taken, the same has been explained by pointing out that the applicant herein became aware about the land acquisition proceedings and reference proceedings before this court only in October, 2004 and thereafter, necessary steps were taken to file the present application.

4. There is no reason to doubt the bonafide of the applicant. The applicant/litigants should not suffer for the mistakes of the advocate. The explanation offered by the applicant, even if, is not totally satisfactory, by way of indulgence and in the interest of justice, notice of motion is made absolute in terms of prayer clause (a),(b) and (c) on condition that the applicant shall pay costs to the Acquiring Body and SLAO quantified at Rs.2,500/-each.

5. As the proceeding has been restored in view of the above order, in my opinion, chamber summons taken out by the applicant also deserves to be made absolute in terms of prayer clause (a) to (d).

6. This order will not be construed as expression of opinion on merits of the case including rights of the applicant to pursue this proceedings on behalf of the Original claimant.